

ENTERED

April 13, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent

VS.

TERRON JERESE WILLIAMS,

Defendant-Movant.

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CRIMINAL ACTION NO. 4:09-CR-294-5
CIVIL ACTION NO. 4:17-CV-2425

OPINION AND ORDER

ADOPTING MAGISTRATE JUDGE'S MEMORANDUM AND RECOMMENDATION

Pending before the Court in the above referenced proceeding is Movant Terron Jerese Williams's § 2255 Motion to Vacate, Set Aside or Correct Sentence (Doc. 973) and Memorandum in Support (Doc. 974); the United States' Answer and Motion to Dismiss as Time-Barred (Doc. 977); and Magistrate Judge Stacy's Memorandum and Recommendation that the Court deny the § 2255 Motion and grant the United States' Motion to Dismiss (Doc. 978). No objections were filed to the Memorandum and Recommendation.

Standard of Review

Where no party objects to the Magistrate Judge's Memorandum and Recommendation, the Court is not required to perform a *de novo* review of the Magistrate Judge's determination, but need only review it to decide whether it is clearly erroneous or contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Once a defendant has been convicted and has exhausted or waived his right to appeal, a Court may presume that he "stands fairly and finally convicted." *United States v. Willis*, 273 F.3d 592, 595 (5th Cir. 2001). Therefore relief under § 2255 is limited to "transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a

complete miscarriage of justice.” *United States v. Gaudet*, 81 F.3d 585, 589 (5th Cir. 1996). The court’s ability to reduce or modify a sentence of imprisonment once it has been imposed is restricted. *United States v. Lopez*, 26 F.3d 512, 515 (5th Cir. 1994) (per curiam). There are four grounds on which a defendant may move to vacate, set aside, or correct his sentence under § 2255: (1) “the sentence was imposed in violation of the Constitution or laws of the United States”; (2) “the [district] court was without jurisdiction to impose such sentence”; (3) “the sentence was in excess of the maximum authorized by law”; and (4) the sentence was “otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). “A defendant can challenge his conviction after it is presumed final only on issues of constitutional or jurisdictional magnitude . . . and may not raise an issue for the first time on collateral review without showing both ‘cause’ for his procedural default and ‘actual prejudice’ resulting from the error.” *United States v. Shaïd*, 937 F.2d 228, 232 (5th Cir. 1991) (citations omitted).

Conclusion

The Court has carefully reviewed the filings, the Magistrate Judge’s Memorandum and Recommendation, and the applicable law and finds the Memorandum and Recommendation is not erroneous in its factual findings nor contrary to law. Accordingly, the Court hereby adopts the Magistrate Judge’s Memorandum and Recommendation as its own.

Finally, under 28 U.S.C. § 2253(c)(1)(B), “[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a proceeding under section 2255.” *See also* FED. R. APP. P. 22(b)(1) (“In a habeas corpus proceeding in which the detention complained of arises from . . . a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).”).

Furthermore, “[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003), *citing Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A district court may deny a certificate of appealability *sua sponte*. *Haynes v. Quarterman*, 526 F.3d 189, 193 (5th Cir. 2008), *citing Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (per curiam). Accordingly, it is hereby

ORDERED that the United States’ Motion to Dismiss is GRANTED and the Movant’s § 2255 Motion is DENIED. It is further

ORDERED that a certificate of appealability is DENIED.

SIGNED at Houston, Texas, this 12th day of April, 2018.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE